CASE SUMMARY

Complaint against the Census and Statistics Department for wrongly sending its Notices on Lodgement of Import/Export/Re-export Declaration despite repeated complaints

The Complaint

The complainant lodged a complaint against the Census and Statistics Department (C&SD) for wrongly sending its Notices on Lodgement of Import/Export/Re-export Declaration (hereafter referred to as notices) intended for an exporting company (hereafter referred to as the Company) to his residential address despite his repeated complaints.

Background Information Provided by the Complainant

2. Since the complainant moved to his present address in December 1997, he received numerous notices addressed to the Company from C&SD. He repeatedly returned these post items to C&SD and requested the Department not to send them to him again. As he continued to receive similar notices, he complained to C&SD in September 1999. Despite this, he continued to receive such notices. Feeling aggrieved, he lodged his complaint with this Office in February 2000.

Observations and Opinions

3. According to C&SD, every person who imports or exports any article is required to lodge with the Commissioner of Customs and Excise an accurate and complete import/export declaration within 14 days after the importation/exportation of the article and pay the required declaration charges. The Government checks the completeness and accuracy of this information against information in cargo manifests provided by transport carriers. Where non-lodgement is identified, notices would be issued to the companies/individuals concerned. The authority of the Commissioner of Customs and Excise to issue notices under the Import and Export Ordinance was delegated to C&SD. The purpose of identifying non-lodgement cases is to safeguard Government revenue collected through trade declarations and the reliability of trade statistics. Notices for non-lodgement cases are issued based on information provided in cargo manifests. However, information on manifests may sometimes be inaccurate, resulting in the issue of notices to wrong addresses. These notices would often be returned to the Department. To avoid possible abuse of the system by traders, a selection of the undelivered notices returned would be referred to the Customs and Excise Department (C&ED) for investigation. Because of resource considerations and to avoid undue disturbance to the public, C&SD makes referrals only

after 10 or more notices have been returned in respect of one trader within a month or where special circumstances required the attention of C&ED.

4. C&SD explained that in the present case, the notices were issued to the complainant's address because the cargo manifests submitted by the transport carriers clearly indicated that the Company exporting the goods was located at the complainant's address. Upon C&ED's investigation, the Company lodged in mid-December 1999 the required export declarations showing that all shipments had been made by the Company located at the complainant's address. There was no indication that the address was wrong or that there had been a change of company address. C&SD stressed that according to the Import and Export (Registration) Regulations, information reported on import and export declarations should be accurate. Pamphlets and cautionary notes on the declaration forms remind importers/exporters of the legal consequences of providing inaccurate information. C&SD further pointed out that there had in fact been incidents where a company, despite initial denial, was later confirmed after C&ED's investigation to be located at the given address. Under such circumstances, C&SD decided to issue further notices to the Company at the complainant's address when subsequent non-lodgement cases were identified.

5. This Office accepts that initially C&SD might have a point not to refer to C&ED for investigation as the number of returned notices was relatively small. However, C&SD should have referred the case to C&ED immediately upon receiving the complaint in September 1999 under the "special circumstances" category referred to at paragraph 3 above. In the event, C&SD referred the case to C&ED for investigation on 6 December 1999 after a total of 12 notices had been withheld by the Department.

6. C&SD admitted that it had not acknowledged the complainant's letter of 9 September 1999, contrary to its established departmental procedures. Although not explicitly stated, the Department's practice has been to accord the same treatment to letters with or without sender's name, unless the address on the letter is illegible or it is obviously a mischievous act. The subject officer, however, decided at the material time that no acknowledgement was required as the sender's identity was not known. C&SD undertook to give clear guidelines on the issue of acknowledgement and to remind staff to seek instructions in case of doubt.

7. This Office considers there had been administrative oversight on the part of C&SD in neither acknowledging the complaint of 9 September 1999 nor providing the complainant with a substantive reply after the completion of C&ED's investigation in January 2000.

8. After investigating the complaint referred to the Department by this Office and taking note of the inconvenience caused to the complainant, C&SD assured him by its letter of 18 March 2000 that no more notices involving the Company would be sent to his address. The Department also informed him that it was liaising with C&ED regarding the need to take legal action against

the Company for wrongly using the complainant's address as its address.

9. When C&SD received the referral of this complaint from this Office on 13 March 2000, it immediately took steps to stop future dispatches of notices to the complainant's address. Despite this, the complainant received two more notices on 18 and 21 March 2000 respectively. C&SD explained that its usual practice is to pre-print notices a few working days before the issue date. This allows time for printing, folding, enveloping and batching before sending to the Post Office by batches twice a week. Although the two notices in question bore the issue date of 14 March 2000, they were in fact printed by the computer on 10 and 11 March 2000 respectively. When C&SD re-instituted the complainant's address in its interception screening process on 13 March 2000, these two notices had already been processed and were among the batch of notices dispatched to the Post Office on 17 March 2000.

10. C&SD further pointed out that its two computer systems for issuing notices were over ten years old, and their capacity and functionality could not meet the present business volumes and related requirements. A replacement system was being developed. As an interim measure, the current systems would be enhanced by fully automating the screening process before the end of June 2000.

Conclusion

11. Having regard to the above findings, The Ombudsman concludes that the complaint against C&SD is **partially substantiated**.

Recommendations

12. The Ombudsman recommends the Commissioner for Census and Statistics to:

(a) apologize to the complainant for the inconvenience caused; and

(b) expedite

(i) the development/enhancement of computer system so as to ensure a higher accuracy rate in the relevant notices screening process;

(ii) the review together with the C&ED in revising the criteria for referral of doubtful cases of malpractice; and

(iii) the exploration of possible means other than C&ED's investigations so as to step up the monitoring of cases involving undelivered notices.

Response from C&SD

13. The Commissioner for Census and Statistics has accepted the conclusion and the recommendations in the investigation report. A letter of apology has been sent to the complainant.

Office of The Ombudsman
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